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Attorneys for Plaintiff Ameranth, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.

Plaintiff,

v.

SEAMLESS NORTH AMERICA, LLC,

Defendant.

Case No. **'12CV0737 LAB POR**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Seamless North America,
3 LLC (“Seamless”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having a principal
6 place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth
7 develops, manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and
8 food service information technology solutions under the trademarks 21st Century
9 Communications™, and 21st Century Restaurant™, among others, comprising the
10 synchronization and integration of hospitality information and hospitality software applications
11 between fixed, wireless and/or internet applications, including but not limited to computer
12 servers, web servers, databases, affinity/social networking systems, desktop computers,
13 laptops, “smart” phones and other wireless handheld computing devices.

14 2. Defendant Seamless North America, LLC (“Seamless”) is, on information and belief,
15 a Delaware limited liability company having a principal place of business in New York, New
16 York. On information and belief, Seamless makes, uses, offers for sale or license and/or sells
17 or licenses restaurant and foodservice information technology products, software, components
18 and/or systems within this Judicial District, including the Seamless Ordering System as defined
19 herein.

20 **JURISDICTION AND VENUE**

21 3. This is an action for patent infringement arising under the Patent Laws of the United
22 States, 35 U.S.C. §§ 271, 281-285.

23 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
24 1338(a).

25 5. On information and belief, Defendant engages in (a) the offer for sale or license and
26 sale or license of hospitality, restaurant, food service, ordering, products and/or components in
27 the United States, including this Judicial District, including services, products, software, and
28 components, comprising wireless and internet POS and/or hospitality aspects; (b) the

1 installation and maintenance of said services, products, software, components and/or systems
2 in hospitality industry, restaurant, food service, and/or entertainment information technology
3 systems in the United States, including this Judicial District; and/or (c) the use of hospitality
4 industry, restaurant, food service, and/or entertainment information technology systems
5 comprising said services, products, software, components and/or systems in the United States,
6 including this Judicial District.

7 6. This Court has personal jurisdiction over Defendant because Defendant commits acts
8 of patent infringement in this Judicial District including, *inter alia*, making, using, offering for
9 sale or license, and/or selling or licensing infringing services, products, software, components
10 and/or systems in this Judicial District.

11 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and
12 1400(b).

13 **BACKGROUND**

14 8. Ameranth was established in 1996 to develop and provide its 21st Century
15 Communications™ innovative information technology solutions for the hospitality industry
16 (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment
17 and sports venues). Ameranth has been widely recognized as a technology leader in the
18 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,
19 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning
20 inventions enable, in relevant part, generation and synchronization of menus, including but not
21 limited to restaurant menus, event tickets, and other products across fixed, wireless and/or
22 internet platforms as well as synchronization of hospitality information and hospitality
23 software applications across fixed, wireless and internet platforms, including but not limited to,
24 computer servers, web servers, databases, affinity/social networking systems, desktop
25 computers, laptops, "smart" phones and other wireless handheld computing devices.

26 9. Ameranth began development of the inventions leading to the patent-in-suit and the
27 other patents in this patent family in the late Summer of 1998, at a time when the then-
28 available wireless and internet hospitality offerings were extremely limited in functionality,

1 were not synchronized and did not provide an integrated system-wide solution to the pervasive
2 ordering, reservations, affinity program and information management needs of the hospitality
3 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in
4 order to meet those needs, and thereafter conceived and developed its breakthrough inventions
5 and products to provide systemic and comprehensive solutions directed to optimally meeting
6 these industry needs. Ameranth has expended considerable effort and resources in inventing,
7 developing and marketing its inventions and protecting its rights therein.

8 10. Ameranth's pioneering inventions have been widely adopted and are thus now
9 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's
10 solutions have been adopted, licensed and/or deployed by numerous entities across the
11 hospitality industry.

12 11. The adoption of Ameranth's technology by industry leaders and the wide acclaim
13 received by Ameranth for its technological innovations are just some of the many
14 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received
15 twelve different technology awards (three with "end customer" partners) and has been widely
16 recognized as a hospitality wireless/internet technology leader by almost all major national and
17 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and
18 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for
19 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its
20 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.
21 In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
22 information technology for the betterment of mankind." This prestigious award was based on
23 Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology.
24 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of
25 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press
26 releases announcing these patent grants on business wires, on its web sites and at numerous
27 trade shows attended by various of the Defendants since the first of the two presently-asserted
28

1 patents issued in 2002. A number of companies have licensed patents and technology from
2 Ameranth, recognizing the value of Ameranth's innovations.

3 **RELATED CASE PREVIOUSLY FILED**

4 12. The Ameranth patent asserted herein, U.S. Patent No. 8,146,077 (the "'077 patent"),
5 is the fourth patent to issue in Ameranth's "Information Management and Synchronous
6 Communications" patent family.

7 13. Ameranth is also currently asserting eight claims of the first three of its patents in a
8 separate litigation pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-
9 01810-JLS-NLS) against several parties, including Seamless.

10 **COUNT I**

11 **Patent Infringement (U.S. Pat. No. 8,146,077)**

12 **(35 U.S.C. § 271)**

13 14. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-14 above
14 as if fully set forth herein.

15 15. On March 27, 2012, United States Patent No. 8,146,077 entitled "Information
16 Management and Synchronous Communications System with Menu Generation, and
17 Handwriting and Voice Modification of Orders" (a true copy of which is attached hereto as
18 **Exhibit A** and incorporated herein by reference) was duly and legally issued by the United
19 States Patent & Trademark Office.

20 16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in
21 and to the '077 patent.

22 17. On information and belief, Defendant directly infringes and continues to directly
23 infringe one or more valid and enforceable claims of the '077 patent, in violation of 35 U.S.C.
24 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing
25 systems, products, and/or services in the United States without authority or license from
26 Ameranth, including but not limited to the Seamless ordering system/product/service, which
27 includes, inter alia, wireless and internet POS integration, online and mobile ordering,
28 integration with e-mail and affinity program and social media applications such as Facebook,

1 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other
2 hospitality aspects (“Seamless Ordering System”).

3 18. On information and belief, the Seamless Ordering System, as deployed and/or used
4 at or from one or more locations by Seamless, its agents, distributors, partners, affiliates,
5 licensees, and/or their customers, infringes one or more valid and enforceable claims of the
6 ‘077 patent, by, *inter alia*, enabling ordering and other hospitality functions via iPhone,
7 Android, and other internet-enabled wireless handheld computing devices as well as via Web
8 pages, storing hospitality information and data on at least one database, on at least one wireless
9 handheld computing device, and on at least one Web server and Web page, and synchronizing
10 applications and data, including but not limited to applications and data relating to orders,
11 between at least one database, wireless handheld computing devices, and at least one Web
12 server and Web page; utilizing communications control software enabled to link and
13 synchronize hospitality information between at least one database, wireless handheld
14 computing device, and web page, to display information on web pages and on different
15 wireless handheld computing device display sizes, and to allow information to be entered via
16 Web pages, transmitted over the internet, and automatically communicated to at least one
17 database and to wireless handheld computing devices; allowing information to be entered via
18 wireless handheld computing devices, transmitted over the internet, and automatically
19 communicated to at least one database and to Web pages.

20 19. On information and belief, Defendant indirectly infringes, as of the date of filing
21 and/or service of this complaint, one or more valid and enforceable claims of the ‘077 patent,
22 in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
23 infringement by other persons.

24 20. On information and belief, customers of Seamless, including consumers and
25 restaurant operators, use the Seamless Ordering System in a manner that infringes upon one or
26 more valid and enforceable claims of the ‘077 patent. Seamless provides instruction and
27 direction regarding the use of the Seamless Ordering System and advertises, promotes, and
28 encourages the use of the Seamless Ordering System.

1 21. On information and belief, Defendant actively induces others to infringe the '077
2 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
3 customers of Seamless, including consumers and restaurant operators, to use the infringing
4 Seamless Ordering System in the United States without authority or license from Ameranth.

5 22. On information and belief, Defendant contributorily infringes and continues to
6 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation
7 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
8 of the '077 patent read, constituting a material part of the invention, knowing that the
9 components were especially adapted for use in systems which infringe claims of the '077
10 patent.

11 23. By distributing, selling, offering, offering to sell or license and/or selling or licensing
12 the Seamless Ordering System, Defendant provides non-staple articles of commerce to others
13 for use in infringing systems, products, and/or services. Additionally, Seamless provides
14 instruction and direction regarding the use of the Seamless Ordering System and advertises,
15 promotes, and encourages the use of the Seamless Ordering System. Users of the Seamless
16 Ordering System directly infringe one or more valid and enforceable claims of the '077 patent,
17 for the reasons set forth hereinabove.

18 24. On information and belief, the Seamless Ordering System infringes one or more
19 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

20 25. If Defendant does not cease and desist the aforesaid infringing activities, and instead
21 continues to infringe valid and enforceable claims of the '077 patent after the date of filing
22 and/or service of this complaint, then such infringing actions will have been done with
23 knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case
24 within the meaning of 35 U.S.C. § 285.

25 26. The aforesaid infringing activity of Defendant directly and proximately causes
26 damage to plaintiff Ameranth, including loss of profits from sales it would have made but for
27 the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause
28 irreparable injury to Ameranth for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendants, and each of them, as follows:

1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license of the Seamless Ordering System infringes valid and enforceable claims of the '077 patent, as set forth hereinabove;

2. Adjudging that Defendant has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '077 patent, as set forth hereinabove;

3. If Defendant does not cease and desist the aforesaid infringing activities and instead continues to infringe valid and enforceable claims of the '077 patent after the date of filing and/or service of this Complaint, adjudging that Defendant's infringement of the valid and enforceable claims of the '077 patent has been knowing and willful;

4. Enjoining Defendant, and its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with Defendant, and their successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the valid and enforceable claims of the '077 patent;

5. Awarding Ameranth the damages it has sustained by reason of Defendant's infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

6. If Defendant does not cease and desist the aforesaid infringing activities and instead continues to infringe valid and enforceable claims of the '077 patent after the date of filing and/or service of this Complaint, awarding Ameranth increased damages of three times the amount found or assessed against Defendant by reason of the knowing, willful and deliberate nature of Defendant's acts of infringement pursuant to 35 U.S.C. § 284;

7. Adjudging this to be an exceptional case and awarding Ameranth its attorney's fees pursuant to 35 U.S.C. §285;

8. Awarding to Ameranth its costs of suit, and interest as provided by law; and

1 9. Awarding to Ameranth such other and further relief that this Court may deem
2 just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Ameranth demands trial by jury of its claims set forth herein to the maximum extent
5 permitted by law.

6 Respectfully submitted,

7 Dated: March 27, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

8 By: /s/ William J. Caldarelli
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